

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Member Donnelly

February 16, 2012

An act to ~~add Section 39602.8 to~~ amend Sections 39674 and 42400 of, and to add Section 42410.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Donnelly. Air pollution: violations.

(1) Existing law establishes the State Air Resources Board as the state agency with primary jurisdiction over the regulation of air pollution. Existing law grants to air pollution control and air quality management districts the primary authority for the control of air pollution from all sources other than vehicular sources. Existing law subjects violators of air pollution laws to specified civil, *administrative*, and criminal penalties.

~~This bill would require the state board and all air pollution control and air quality management districts to issue a warning for the first violation of any state air pollution control law bill, commencing January 1, 2013, would require the state board, an air pollution control district, or an air quality management district, as specified, except for violations causing actual injury, as defined, to issue a warning for the first violation of any rule, regulation, permit, or order of the state board or of a district, as specified, whether for a civil, administrative, or criminal penalty. The bill, for administrative penalties, would require the state board, except for violations causing actual injury, as defined, to issue a warning for the first violation of any regulation of the state. The bill~~

would prohibit the state board or a district, as specified, from issuing a second violation sooner than 60 days following the issuance of the first violation. By adding to the duties of air pollution control and air quality management districts, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 39602.8 is added to the Health and Safety~~
2 ~~Code, to read:~~
3 ~~39602.8. Notwithstanding any other law, the state board and~~
4 ~~all districts shall only issue a warning for the first violation of any~~
5 ~~state air pollution control law.~~
6 ~~SECTION 1. Section 39674 of the Health and Safety Code is~~
7 ~~amended to read:~~
8 ~~39674. (a) (1) Except as otherwise provided in paragraph~~
9 ~~(2) and in subdivision (b), any person who violates any rule or~~
10 ~~regulation, emission limitation, or permit condition adopted~~
11 ~~pursuant to Section 39659 or Article 4 (commencing with Section~~
12 ~~39665) or which that is implemented and enforced as authorized~~
13 ~~by subdivision (b) of Section 39658 is shall be strictly liable for~~
14 ~~a civil penalty not to exceed one thousand dollars (\$1,000) for~~
15 ~~each day in which the violation occurs.~~
16 ~~(2) (A) Commencing January 1, 2013, any person who violates~~
17 ~~paragraph (1), except for violations that cause actual injury, shall~~
18 ~~be issued a warning for the first violation and, for the second~~
19 ~~violation, shall be strictly liable for a civil penalty not to exceed~~
20 ~~one thousand dollars (\$1,000) for each day in which the violation~~
21 ~~occurs.~~

1 (B) Commencing January 1, 2013, a second violation shall not
2 be issued pursuant to this subdivision sooner than 60 days
3 following the issuance of the first violation.

4 (C) For purposes of this paragraph, “actual injury” means any
5 physical injury that, in the opinion of a licensed physician and
6 surgeon, requires medical treatment involving more than a physical
7 examination.

8 (b) (1) Any person who violates any rule or regulation, emission
9 limitation, permit condition, order fee requirement, filing
10 requirement, duty to allow or carry out inspection or monitoring
11 activities, or duty to allow entry for which delegation or approval
12 of implementation and enforcement authority has been obtained
13 pursuant to subdivision ~~(f)~~ (l) of Section 112 of the Clean Air Act
14 (42 U.S.C. Section ~~7412(f)~~ 7412(l)) or the regulations adopted
15 pursuant thereto, adopted pursuant to Section 39659 or Article 4
16 (commencing with Section 39665) or ~~which~~ that is implemented
17 and enforced as authorized by subdivision (b) of Section 39658 ~~is~~
18 shall be strictly liable for a civil penalty not to exceed ten thousand
19 dollars (\$10,000) for each day in which the violation occurs.

20 (2) Where a civil penalty in excess of one thousand dollars
21 (\$1,000) for each day of violation is sought, there is no liability
22 under paragraph (1) if the person accused of the violation alleges
23 by affirmative defense and establishes that the violation is caused
24 by an act ~~which~~ that was not the result of intentional or negligent
25 conduct. In a district in which a Title V permit program has been
26 fully approved, this paragraph shall not apply to a violation of
27 federally enforceable requirements that occur at a Title V source.

28 (3) Paragraph (2) shall not apply to a violation of a toxic air
29 contaminant rule, regulation, permit, order, fee requirement, filing
30 requirement, duty to allow or carry out inspection or monitoring
31 activities, or duty to allow entry for which delegation or approval
32 of implementation and enforcement authority has been obtained
33 pursuant to subdivision ~~(f)~~ (l) of Section 112 of the Clean Air Act
34 (42 U.S.C. Sec. ~~7412(f)~~ 7412(l)), or the regulations adopted
35 pursuant thereto.

36 SEC. 2. Section 42400 of the Health and Safety Code is
37 amended to read:

38 42400. (a) Except as otherwise provided in Section 42400.1,
39 42400.2, 42400.3, 42400.3.5, or 42400.4, and except as provided
40 in subdivision (f), any person who violates this part, or any rule,

1 regulation, permit, or order of the state board or of a district,
2 including a district hearing board, adopted pursuant to Part 1
3 (commencing with Section 39000) to Part 4 (commencing with
4 Section 41500), inclusive, ~~is~~ *shall be* guilty of a misdemeanor and
5 ~~is~~ *shall be* subject to a fine of not more than one thousand dollars
6 (\$1,000) or imprisonment in the county jail for not more than six
7 months, or both.

8 (b) If a violation under subdivision (a) with regard to the failure
9 to operate a vapor recovery system on a gasoline cargo tank is
10 directly caused by the actions of an employee under the supervision
11 of, or of any independent contractor working for, any person
12 subject to this part, the employee or independent contractor, as the
13 case may be, causing the violation ~~is~~ *shall be* guilty of a
14 misdemeanor and ~~is~~ *shall be* punishable as provided in subdivision
15 (a). That liability shall not extend to the person employing the
16 employee or retaining the independent contractor, unless that
17 person is separately guilty of an action that violates this part.

18 (c) Any person who owns or operates any source of air
19 contaminants in violation of Section 41700 that causes actual
20 injury, as defined in subdivision (d), to the health or safety of a
21 considerable number of persons or the public ~~is~~ *shall be* guilty of
22 a misdemeanor and ~~is~~ *shall be* subject to a fine of not more than
23 fifteen thousand dollars (\$15,000) or imprisonment in the county
24 jail for not more than nine months, or both.

25 (d) As used in this section, “actual injury” means any physical
26 injury that, in the opinion of a licensed physician and surgeon,
27 requires medical treatment involving more than a physical
28 examination.

29 (e) Each day during any portion of which a violation of
30 subdivision (a) or (c) occurs is a separate offense.

31 (f) (1) *Commencing January 1, 2013, any person who violates*
32 *subdivision (a) shall be issued a warning for the first violation*
33 *and, for the second violation, shall be guilty of a misdemeanor*
34 *and shall be subject to a fine of not more than one thousand dollars*
35 *(\$1,000) or imprisonment in the county jail for not more than six*
36 *months, or both.*

37 (2) *Commencing January 1, 2013, a second violation shall not*
38 *be issued pursuant to this section sooner than 60 days following*
39 *the issuance of the first violation.*

1 *SEC. 3. Section 42410.5 is added to the Health and Safety*
2 *Code, to read:*

3 42410.5. (a) (1) *Notwithstanding Section 42410, except for*
4 *violations that cause actual injury, as an alternative to seeking*
5 *civil penalties under Sections 39674, 42401, 42402, 42402.1,*
6 *42402.2, and 42402.3 for a violation of regulations of the state*
7 *board, the state board shall issue a warning for the first violation*
8 *and, for the second violation, the state may impose an*
9 *administrative penalty. Any administrative penalty imposed under*
10 *this section shall be imposed as an alternative to, and not in*
11 *addition to, a civil penalty imposed pursuant to this article. No*
12 *administrative penalty imposed by the state board pursuant to this*
13 *section shall exceed the amount that the state board is authorized*
14 *to seek as a civil penalty for the applicable violation, and no*
15 *administrative penalty imposed pursuant to this section shall*
16 *exceed ten thousand dollars (\$10,000) for each day in which there*
17 *is a violation up to a maximum of one hundred thousand dollars*
18 *(\$100,000) per penalty assessment proceeding.*

19 (2) *A second violation shall not be issued pursuant to this section*
20 *sooner than 60 days following the issuance of the first violation.*

21 (3) *For purposes of this section, “actual injury” means any*
22 *physical injury that, in the opinion of a licensed physician and*
23 *surgeon, requires medical treatment involving more than a physical*
24 *examination.*

25 (b) *Nothing in this section restricts the authority of the state*
26 *board to negotiate mutual settlements under any other penalty*
27 *provision of law that exceeds ten thousand dollars (\$10,000) for*
28 *each day in which there is a violation of one hundred thousand*
29 *dollars (\$100,000) per penalty assessment proceeding.*

30 (c) *The administrative penalties authorized by this section shall*
31 *be imposed and recovered by the state board in administrative*
32 *hearings established pursuant to Article 3 (commencing with*
33 *Section 60065.1) and Article 4 (commencing with Section 60075.1)*
34 *of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the*
35 *California Code of Regulations, except that the hearings shall be*
36 *conducted by an administrative law judge appointed by the Office*
37 *of Administrative Hearings.*

38 (d) *Nothing in this section authorizes the state board to seek*
39 *penalties for categories of violations for which the state board*
40 *may not recover penalties in a civil action.*

1 (e) If the state board imposes any administrative penalties
2 pursuant to this section, the state board shall not bring any action
3 pursuant to, or rely upon, Chapter 4 (commencing with Section
4 17000) of Part 2 of Division 7 of the Business and Professions
5 Code.

6 (f) In determining the amount of any administrative penalty
7 imposed pursuant to this section, the state board shall take into
8 consideration all relevant circumstances, including, but not limited
9 to, those factors specified in subdivision (b) of Section 42403.

10 (g) After an order imposing an administrative penalty becomes
11 final pursuant to the hearing procedures identified in subdivision
12 (c), and no petition for a writ of mandate has been filed within the
13 time allotted for seeking judicial review of the order, the state
14 board may apply to the Superior Court for the County of
15 Sacramento for a judgment in the amount of the administrative
16 penalty. The application, which shall include a certified copy of
17 the final order of the administrative hearing officer, shall constitute
18 a sufficient showing to warrant the issuance of the judgment.

19 (h) For any violation that is within the enforcement jurisdiction
20 of both the state board and the districts, the state board may impose
21 an administrative penalty pursuant to this section only if the district
22 in which the violation has occurred has not commenced an
23 enforcement action for that violation.

24 (i) Any administrative penalty assessed pursuant to this section
25 shall be paid to the Treasurer for deposit in the General Fund.

26 (j) A party adversely affected by the final decision in the
27 administrative hearing may seek independent judicial review by
28 filing a petition for a writ of mandate in accordance with Section
29 1094.5 of the Code of Civil Procedure.

30 ~~SEC. 2.~~

31 SEC. 4. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.